

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 JASON S. BROWN,

Case No.: 3:21-cv-00500-MMD-CSD

4 Plaintiff

Order

5 v.

Re: ECF Nos. 44, 52, 59

6 DR. ADAMSON, et al.,

7 Defendants

8 Before the court are Defendants' motions for leave to file medical records under seal in
9 connection with their response to Plaintiff's motions for a preliminary injunction. (ECF Nos. 44,
10 52, 59.)

11 "Historically, courts have recognized a general right to inspect and copy public records
12 and documents, including judicial records and documents." *Kamakana v. City and County of*
13 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted).
14 "Throughout our history, the open courtroom has been a fundamental feature of the American
15 judicial system. Basic principles have emerged to guide judicial discretion respecting public
16 access to judicial proceedings. These principles apply as well to the determination of whether to
17 permit access to information contained in court documents because court records often provide
18 important, sometimes the only, bases or explanations for a court's decision." *Oliner v.*
19 *Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp.*
20 *v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

21 Documents that have been traditionally kept secret, including grand jury transcripts and
22 warrant materials in a pre-indictment investigation, come within an exception to the general right
23 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of

1 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The
 2 presumption of access is 'based on the need for federal courts, although independent—indeed,
 3 particularly because they are independent—to have a measure of accountability and for the
 4 public to have confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler*
 5 *Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016)
 6 (quoting *United States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley*
 7 *Broad Co. v. U.S. Dist. Ct., D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

8 There are two possible standards a party must address when it seeks to file a document
 9 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,
 10 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only
 11 when it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without
 12 relying on hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must
 13 "'conscientiously balance[] the competing interests of the public and the party who seeks to keep
 14 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the
 15 sound discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599
 16 (1978)). "Examples include when a court record might be used to 'gratify private spite or
 17 promote public scandal,' to circulate 'libelous' statements, or 'as sources of business information
 18 that might harm a litigant's competitive standing.'" *Id.*

19 The good cause standard, on the other hand, is the exception to public access that has
 20 been typically applied to "sealed materials attached to a discovery motion unrelated to the merits
 21 of the case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which
 22 governs the issuance of protective orders in the discovery process: The court may, for good
 23

1 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or
2 undue burden or expense." *Id.*

3 The Ninth Circuit has clarified the key in determining which standard to apply is whether
4 the documents proposed for sealing accompany a motion that is "more than tangentially related
5 to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the
6 compelling reasons standard is applied. If not, the good cause standard is applied.

7 Here, Defendants seek to file exhibits under seal in connection with a response to
8 Plaintiff's motions for injunctive relief. The motions require the court to assess whether Plaintiff
9 is likely to succeed on the merits of his Eighth Amendment claim, and therefore, the documents
10 are "more than tangentially related to the merits of a case." Therefore, the compelling reasons
11 standard applies.

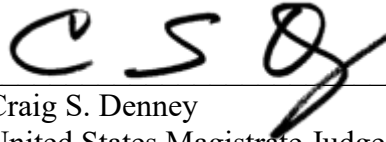
12 This court, and others within the Ninth Circuit, have recognized the need to protect
13 medical privacy qualifies as a "compelling reason" for sealing records. *See, e.g., Moreno v.*
14 *Adamson*, No. 3:19-cv-0330-MMD-CLB, 2021 WL 76722 (De. Nev. Jan. 7, 2021); *San Ramon*
15 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, No. C 10-02258 SBA, 2011 WL89931, at
16 *n.1 (N.D. Cal. Jan. 10, 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, No. 09-000545
17 SOM/BMK, 2010 WL4715793, at * 1-2 (D. HI. Nov. 15, 2010); *Wilkins v. Ahern*, No. C 08-
18 1084 MMC (PR), 2010 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare*
19 *Alliance Corp.*, No. CV-08-02381-PHX-FJM, 2009 WL 1212170, at * 1 (D.Ariz. May 4, 2009).
20 This is because a person's medical records contain sensitive and private information about their
21 health. While a plaintiff puts certain aspects of his medical condition at issue when he files an
22 action alleging deliberate indifference to a serious medical need under the Eighth Amendment,
23 that does not mean that the entirety of his medical records filed in connection with a motion

1 (which frequently contain records that pertain to unrelated medical information) need be
2 unnecessarily broadcast to the public. In other words, the plaintiff's interest in keeping his
3 sensitive health information confidential outweighs the public's need for direct access to the
4 medical records.

5 Here, the referenced exhibits contain Plaintiff's sensitive health information, medical
6 history, and treatment records. Balancing the need for the public's access to information
7 regarding Plaintiff's medical history, treatment, and condition against the need to maintain the
8 confidentiality of Plaintiff's medical records weighs in favor of sealing these exhibits. Therefore,
9 Defendants' motions (ECF No. 44, 52, 59) are **GRANTED**.

10 **IT IS SO ORDERED.**

11 Dated: April 7, 2023

12 
13 Craig S. Denney
14 United States Magistrate Judge
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